TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 746.

THE UNITED STATES, APPELLANTS,

vs.

GEORGE A. BELL.

APPEAL FROM THE COURT OF CLAIMS.

FILED APRIL 14, 1871.

SUPREME COURT OF THE UNITED STATES.

No. 746.

THE UNITED STATES, APPELLANTS,

vs.

GEORGE A. BELL.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
Petition	1	1
Traverse	3	2
Final judgment of the court	4	3
Application for allowance of appeal	5	3
Order allowing same	6	3
Findings of fact and conclusions of law	7	3
Opinion of the court	10	4
Opinion of Chief Justice Drake	18	12
Certificate	19	12

1 To the honorable Court of Claims of the U. S., Washington, D. C.

GEORGE A. BELL
vs.
THE UNITED STATES. } No. 7001.—Filed Feb. 27, 1873.

Your petitioner, George A. Bell, respectfully represents that he is a resident of the city of Washington, D. C., and is an employee in what is known and designated as the "National Currency Bureau" of the Treasury Department of the United States.

That he was such employee on the 28th day of February, 1867, and that the amount of his pay or compensation, according to the terms of his employment in said Bureau, for one year from and after the 30th day of June, 1866, was $1,127.00.

That he was employed in said Bureau during the fiscal year ending June 30th, 1867, and the amount of his compensation for such service was the sum aforesaid, which sum was paid him in monthly installments by the disbursing officer of the Treasury, in accordance with the rules thereof. That he was employed in said Bureau as a machineist, and by the terms of his employment received the am't aforesaid.

That the United States are indebted to him in the sum of two hundred and twenty-five $\frac{40}{100}$ dollars on the labor performed by him for the time aforesaid, being twenty per cent. of the compensation paid him by the United States during the fiscal year ending June 30, 1867.

That said indebtedness accrued to your petitioner under and by virtue of the provisions of a joint resolution of Congress approved February 28, 1867, which resolution is in the following words, to wit:

"Be it resolved, &c., That there shall be allowed and paid, out of any money in the Treasury not otherwise appropriated, to the following described persons now employed in the civil service of the United States at Washington, as follows: To civil officers, temporary and all other clerks, messengers, and watchmen, including enlisted men detailed as such, to be computed upon the gross amount of the compensation received by them; and employees, male and female, in the Executive Mansion, and in any of the following named Departments, or any bureau or division thereof, to wit: State, Treasury, War, Navy, Interior, Post-Office, Attorney-General, Agricultural, and including civil officers, and temporary and all other clerks and employees, male and female, in the offices of the Coast Survey, Naval Observatory, navy-yard, arsenal, Paymaster-General, including the division of referred claims, Com-

2 missary-General of Prisoners, Bureau of Refugees, Freedmen and Abandoned Lands, Quartermaster's, Capitol and Treasury Extension, city post-office, and Commissioner of Public Buildings, to the photographer and assistant photographer of the Treasury Department, to the superintendent of meters, and to lamp-lighters under the Commissioner of Public Buildings, an additional compensation of twenty per centum on their respective salaries as fixed by law, or, where no salary is fixed by law, upon their pay respectively, for one year from and after the thirteenth day of June, eighteen hundred and sixty-six; but when any of said persons is or shall be only entitled to receive salary or pay for a part of said year, the said twenty per centum shall be computed on the amount such person is so entitled to receive for services in any or all of said Departments or offices within said year: Provided, That the above-named additional compensation to the employees of the Patent-Office shall be paid out of the funds of said office: Provided further, That this resolution shall not apply to persons whose salaries, as fixed by law, exceed three thousand five hundred dollars per annum."

That your petitioner has frequently applied to the First Comptroller

of the Treasury for the allowance and payment of the twenty per cent. allowed him by the terms of the resolution aforesaid, but the said Comptroller has uniformly and at all times refused to allow and pay the amount aforesaid.

Your petitioner further represents that he is the owner of said claim, and that no interest in, nor any part of, said claim has been sold, assigned, or transferred by him.

That he has at all times borne true allegiance to the Government of the United States, and that he has never voluntarily aided or abetted or given encouragement in any way to the rebellion against the Government.

In consideration of the premises, your petitioner respectfully prays judgment of this honorable court for the sum of $225\frac{40}{100}$, being the amount of twenty per cent. upon the compensation he received as aforesaid, and by virtue of the resolution aforesaid; and your petitioner, as in duty bound, will ever prey, &c.

GEO. A. BELL, *Claimant.*
CHANDLER, MORTON & CULVER,
Attorney.

WASHINGTON, D. C., *to wit*:

Geo. A. Bell, being duly sworn, deposes and says that he is the petitioner named in the foregoing petition; that he has read the foregoing petition, and knows the facts therein stated, and that the same are true. He further says that no assignment or transfer of the claim therein mentioned, or any part thereof, or any interest therein, has been made by him, and that he is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets.

Sworn to and subscribed before me this 14 day of February, 1873, in the city of Washington, D. C.

JOS. SEGAR,
United States Commissioner.

(Indorsed:) Petition. No. 7001. George A. Bell *vs.* The United States. Filed Feb'y 27, 1873. J. R. Copy. Chandler, Morton & Culver, att'ys, Washington, D. C.

3 In the United States Court of Claims. December term, A. D. 1873.

GEO. A. BELL *vs.* THE UNITED STATES. } No. 7001.—Filed Mar. 28, 1874.

And the said defendants, by their Attorney-General, come and make answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of two hundred and twenty-five $\frac{40}{100}$ dollars, the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

JOHN GOFORTH,
Assistant Attorney-General.

4 In the Court of Claims.

GEORGE A. BELL
vs.
THE UNITED STATES. } No. 7001.

At a Court of Claims held at the Capitol, in the city of Washington, the 30th day of March, A. D. 1874, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said George A. Bell, claimant, have and recover of and from the United States the sum of two hundred and twenty-five dollars and forty cents, ($225\frac{40}{100}$.)

By the court.

5 In the Court of Claims of the United States.—December term, 1873.

GEORGE A. BELL
vs.
THE UNITED STATES. } No. 7001.

From the judgment rendered in the above-entitled cause on March 30, 1874, in favor of claimant, the defendants, by their Attorney-General, on the 13th day of April, 1874, make application for, and give notice of, an appeal to the Supreme Court of the United States, the judgment in said cause being one which will affect a class of cases.

Filed April 13, 1874.

JOHN GOFORTH,
Ass't Attorney-General.

It is hereby certified that the judgment in the above cause is one which will affect a class of cases.

C. D. DRAKE, *C. J.*

APRIL 13, 1874.

6 Ordered, that the appeal be allowed as prayed for.

By the court.

APRIL 13, 1874.

7 Court of Claims.

G. A. BELL
vs.
THE UNITED STATES. } No. 7001.

Findings of fact and conclusions of law.

This case having been heard before the chief justice and judges of the Court of Claims, at the city of Washington, on the third day of February, A. D. 1874, the court, after due deliberation, upon the proofs and evidence given at the trial, does hereby, at the time of rendering judgment, find the following facts:

8 During the fiscal year beginning July 1, 1866, and ending June 30, 1867, the claimant was employed as a plate-printer in the Bureau of Engraving and Printing, in the Treasury Department. He was paid the ruling market-price paid by private parties for similar services, at that time, being an agreed rate per one hundred sheets of face and per one hundred sheets of back printing. He employed an assistant, to be paid by him from his earnings, but the assistant was paid directly by the disbursing officer of the Department, and the sum thus paid was deducted from the gross earnings of the claimant. He was thus employed during

the month of February, 1867, but it does not appear that he worked or was employed on the 28th day of February, 1867, as the rolls of the Department show only the number of sheets printed during the
9 month. Neither does it appear what was the gross amount paid to him during the fiscal year, but it does appear that the balance paid to him, after deducting the amount paid to his assistant, was $1,184.30; twenty per cent. of which will amount to $236.86.

And upon the foregoing facts, the Court of Claims, for the purposes of an appeal, decides, as

CONCLUSION OF LAW,

That the claimant was in the civil service of the United States, within the meaning of the joint resolution 28th February, 1867, (14 Stat. L., p. 569,) and should recover twenty per cent. upon the net compensation set forth in the foregoing finding.

By the court.

10 United States Court of Claims.

THE TWENTY PER CENT. CASES.—FILED MARCH 30, 1874.

GEORGE A. BELL
v.
THE UNITED STATES, (AND OTHER CASES.)

NOTT, J., delivered the opinion of the court:

When the cases arising under that statute which has been familiarly known as the twenty per cent. resolution, February 28, 1867, (14 Stat. L., p. 569,) first came before this court, it was held that they fell into two general classes. The first, it was thought, consisted of those persons who were "in the civil service of the United States, at Washington," and whose salary or pay was "directly fixed or indirectly limited by law." The second class, it was supposed, consisted of those persons whose services were such as might be rendered to any employer; whose wages came under the restrictions of no statute or departmental regulation, and who received for their services whatever such services might be worth in the place where they were rendered. There are, indeed, services not necessarily connected with the Government as a Government, such as those of the public gardeners, but Congress have attached to them the characteristic which distinguishes the civil service from ordinary employments, namely, a fixed and arbitrary rate of compensation. Such cases, we thought, fell within the first class, not because of the nature of the services rendered, but because Congress had placed them there by making them quasi public employments.

The first class of cases (including those just referred to) was carried to the Supreme Court by appeal, and the judgment of this court affirmed. The second class has never been taken to that tribunal. But it is said that the attention of the Supreme Court was called to them upon the argument of the first, and that the broad language used in the opinion of that court was intended to cover all cases that could possibly arise under the joint resolution. The Supreme Court does indeed say that persons are "properly in the civil service, if they were employed by the head of the Department, or of the Bureau, or any division of the Department charged with that duty, and authorized to make such contracts, and fix the compensation of persons employed, even though the particular employment may not be designated in any appropriation" act

And the court adds that "many persons not employed as clerks and messengers of the Departments are in the public service by virtue of an employment by the head of the Department or by the head of a Bureau of the Department authorized by law to make such contracts, and such persons are as much in the service, within the meaning of the joint resolution, as the clerks and messengers employed in the rooms of the Department building." The Twenty per cent. cases, (7 C. Cls. R., p. 290.)

11 Notwithstanding the scope of this language, and the assertion that the attention of the Supreme Court was called to the numerous classes of cases awaiting decision here, we remain of our former opinion, namely, that the cases fall into two classes: the former consisting of persons whose compensation was arbitrarily fixed or indirectly limited by Congress; the latter, of persons whose wages were unrestricted and determinable only by their highest market-value at the place where they were rendered.

As to the reasons upon which this distinction stands, it is sufficient to quote what this court formerly said in Baker's case, (4 C. Cls. R., p. 227:)

There have always been, and were when the joint resolution was passed, two classes of persons in the employment of the Government. The first consists of those whose services are special, and to be distinguished from ordinary employments. They make up the civil service of the United States, and their compensation is directly fixed, or indirectly limited, by law. The second class consists of those persons whose services are such as might be rendered to any employer; whose wages come under the restrictions of no statute, and who receive for their services whatever such services may be worth in the place where they happen to be rendered. For services which are connected with the Government, as a government, and which, being special, have no market-value, the salary, pay, or other compensation is necessarily fixed by law; but where the Government has become a builder or manufacturer, it has never attempted to regulate by law the fluctuating value of labor, which, as with other commodities, competition and the business of the country would control despite legal restriction, nor to overbid other employers in the labor-market, but has paid to its artisans and workmen the same prices for their industry which other employers might be paying for the same services in the same place. Generally this policy has been left to regulate itself between the demands of labor on the one hand, and the restraining duty of the officers charged with the hiring of workmen on the other. Occasionally it has been prescribed by law. Concerning persons in the civil service, we find in the statutes constant reference to the "pay authorized by law." In the act 23d April, 1854, (10 Stat. at L., 276,) to that of "messengers" and "watchmen" of the different Executive Departments of the Government in Washington, and to that of the "public gardener" and the "police at the Capitol;" in the act 18th August, 1856, (11 Stat. L., 145,) to that of "laborers in the employment of the Government, in the Executive Departments, and on the public grounds in the city of Washington," which, for example, the act fixes at "an annual salary of $600 each;" in the act of 14th March, 1864, (13 Stat. L., § 6,) to that of "females whom the heads of Departments are authorized to employ" "at an annual compensation not exceeding 600;" in the act 2 March, 1865, (13 Stat. L., 445, 450,) to that of "temporary clerks," with a special proviso that they "be classified according to the character of their services." But, with respect to persons not in the "civil service," we find no provisions of

law regulating their pay except such as direct that "the hours of labor and the rate of wages of the employés in the navy-yards shall conform, as nearly as is consistent with the public interest, with those of private establishments in the immediate vicinity of the respective yards." Act 16th July, 1862, (12 Stat. L., 587.)

At the time when the joint resolution was passed the compensation of the great body of persons in the civil service at the seat of Government had been left for a long time unrevised, and had fallen into great disorder. By reason of the depreciation of gold and silver and the still greater
12 depreciation of paper money, wherewith these persons were paid, their compensation had become incommensurate with the increased expenses of the times, and particularly with the increased values set upon property and tenements in the city of Washington, and had fallen far behind the increase allowed by the Government to that other body of persons whose rate of compensation kept pace with that paid by private employers. Thus, the very officer of the Treasury whose decision stopped the payment of these claims, and upon whose judgment depended in this matter alone more than half a million dollars, was at that time receiving exactly the same compensation received by one of these claimants, and the average of them all fell but 30 per cent. below his salary. The salary had not been increased since 1799, (act of 2d March, 1799, 1 Stat. L., 729,) and but once since the office of Comptroller of the Treasury was established in 1789, (act 2d September, 1789, 1 Stat. L., 65.) On the contrary, it had been diminished by being paid in depreciated paper money instead of gold and silver. The members of that Congress which fixed the Comptroller's salary at $3,500 a year, themselves received but about $1,200. The per diem allowance received by them in fact amounted, for the three laborious sessions of their two years' term of office, to $2,406. But the pay of that Congress which passed this 20 per cent. resolution had advanced to $5,000 a year exclusive of mileage. The expenses of life had also more than trebled between 1799 and 1867. Taking them at the standard, we may estimate that the Comptroller's salary in 1867 should have been $9,000 a year in gold; or, taking the congressional salary at the standard, we may conclude that if the Congress which increased the pay of Comptroller in 1789 had legislated in 1867, they would have advanced the salary to $12,000 a year in Treasury notes.

A third standard of comparison may be found in the wages paid to these claimants, for it is pretty certain that the artisans of that day would not have received (in gold) a fourth part of the Comptroller's salary; whereas these have received in the average 70 per cent. of his salary, and in one case an amount exactly equal.

In these intervening seventy years the daily toil of the artisan has diminished, but the labor and duties and responsibilities of the Comptroller's Office have been vastly augmented. They embrace the work of examining all accounts settled by the First and Fifth Auditors, and of certifying the balances arising thereon to the Register; of countersigning all warrants drawn by the Secretary of the Treasury which may be warranted by law; of reporting to the Secretary the official forms to be issued to the different officers for collecting the public revenue, and the manner of keeping and stating the accounts of the persons employed therein; of superintending the preservation of the public accounts subject to his revision, and providing for the payment of all moneys which may be collected; of superintending the recovery of all debts due to the United States, and directing legal proceedings to enforce their prompt payment, and of laying before Congress annually a list of such officers

as shall have failed to make the settlements required by law. (Act 3d March, 1817, 3 Stat. L., 367, §§ 8, 10, 13, 14.) The single requirement that all warrants drawn by the Secretary of the Treasury "which shall be warranted by law" be countersigned by the Comptroller, obliges that officer to pass, to a certain extent, upon the legality of every payment made by the United States; and in the fiscal year to which this twenty per centum applies there were 40,814 warrants drawn, requiring of the Comptroller 40,814 signatures, given with his own hand.

But these cases furnish a further illustration. They disclose
13 forty-five bank-note printers, in a Bureau of the Treasury, whose yearly wages amounted to $111,024. The largest received by any one man was $3,500; the smallest $2,039; three of the forty-five were above $3,000; fifteen above $2,500; all but nine above $2,200. In the same Bureau the employés of the civil service who were watchmen or laborers received but $600; those who were messengers, but $840; those who were clerks but $1,200, $1,400, $1,600, $1,800. The superintendent of printing, under whom these men worked, received but $2,000; the chief of the Currency Division, by whom they were employed, but $3,000. The deputy comptroller of the currency, an official whose responsibilities are of so grave a nature that he is required by statute to give security to the amount of $50,000, received less than the wages paid to one-third of the workmen; and, finally, chiefs of divisions in the Auditor's and Comptrollers' Offices, who pass in a single year upon accounts literally embracing millions of dollars, received less than the least of these claimants.

The salaries and pay which Congress undertook to increase by law were the salaries and pay which were regulated by law. Cases, indeed, are spoken of "where no salary is fixed by law," but those were the cases of temporary clerks, persons in the civil service, and whose salaries, though not directly "fixed," were nevertheless indirectly limited by law. Persons also are enumerated in certain military and naval offices, but they were persons who, acting under military and naval authority, still were, as we held in Clark's case, (1 C. Cls. R., p. 145,) "persons engaged in the civil service." The joint resolution was not a wild gratuity, a naked, needless gift of the hard-paid taxes of the nation, but was founded on an intent to do justice to those persons in the civil service who had not been compensated justly for their services. The joint resolution was therefore a remedial statute to be construed by the well-known tests, "the old law, the mischief, and the remedy." The "old law" here was the various statutes establishing, regulating, and limiting the compensation of persons in the civil service. Where there was no old law, and employés received for their services what they were worth among men, the new law did not apply; they who had no wrongs to be righted needed not the remedy which it provided. The "mischief" was the unjust compensation which, by the changed circumstances of the nation, had come to be paid to persons in the civil service, occasioning irritation, discontent, and a sense of wrong in the minds of men, and leading to bribery, extortion, and other evil practices. The "remedy" intended by the joint resolution lies not in flinging the money of a people struggling with a great debt to those who received for their services their highest market-value, merely because such services chanced to be rendered at the seat of Government, where persons in the civil service chiefly are employed, but in faithfully extending the statute to all those actually in the "civil service of the United States," whose compensation was restricted by law, and who, being circumscribed in their means of subsistence by the arbitrary operation of law, could look only to the law for the bettering

of their condition. And therefore it is that the joint resolution, though loosely and recklessly drawn, is still careful to say that the "20 per centum" to be allowed and paid shall be to "persons now employed in the civil service of the United States."

The phrase limits and controls all that follows. The "clerks, messengers, watchmen, and employés" mentioned are not all the persons employed by the Government at Washington, but only the persons employed "in the civil service" of the United States, and whose service was rendered within the functions of the offices named. These claim-
14 ants were not persons in the civil service; they were simply hired by the job, or the day, to do common mechanical labor, and paid for their work all it was worth in the market. Instead of being public servants, they were merely public contractors. The Government owes them no gratuities more than it owes all other contractors, and it has paid to the least of them more than double the average which it pays to persons in the civil service at Washington. "It is the business of the judges so to construe the act as to suppress the mischief and advance the remedy;" and we shall most assuredly do so if we extend it to all who are both within the letter and the spirit of the joint resolution, and to none beside.

The cases now before the court present several distinct questions additional to the general question before considered, and fall into the following classes:

I.—*Plate-printers in the Bureau of Engraving and Printing, in the Treasury Department.*

These men were employed as printers and paid at an agreed rate for the amount of work done. They were allowed to employ assistants, who were paid from their earnings, though paid directly by the disbursing officers of the Department, the sums thus paid being deducted from the gross earnings of the claimants. The evidence before us does not show the amount of the gross earnings, but only of the balance or net earnings after the assistants had been paid. If these men are entitled to recover the twenty per cent., it seems clear to us that it must be estimated and can only be estimated upon the gross earnings paid to them by the Government. The Government was a stranger to their assistants in a legal sense, and was concerned only in the gross amount paid to them. It is not pretended that the assistants could in their turn come in and claim twenty per cent. upon the amount allowed them by their employers, the plate-printers. And it is to be noted that the net earnings in some cases exceed $3,000 per annum, and *non constat*, but that the gross earnings may have exceeded $3,500 per annum.

The joint resolution is limited by the terms of its second proviso to persons "whose salaries as fixed by law" do not "exceed $3,500 per annum." Did Congress ever contemplate giving twenty per cent. upon the earnings of one man whose compensation exceeded $3,500 per annum, and withholding it from another whose salary was fixed by law above that amount? We think not. The proviso indicates that the pay to be increased was pay "fixed by law;" and our conclusion is, that though these men were employés in one sense within an Executive Department, yet they were not persons "in the civil service of the United States" within the meaning of the joint resolution, but contractors whose contract work from prudential reasons was brought within the immediate supervision of an Executive Department.

II.—*Laborers on the Treasury Extension.*

The evidence of the Supervising Architect in this class of cases very clearly illustrates the actual existence of the legal classification which this court, as before stated, originally made. He says: "The labor performed by them was not rendered as duties of civil employés for whose services as such any appropriation for the civil service of the Government at Washington provided compensation. Specific appropriations were made for the construction of the north wing of the
15 Treasury building. Under such appropriations contracts are entered into for finished work, comprehending both materials and labor; materials separately, and labor by the day separately. The services of the parties in question were rendered under the latter contract. The consideration agreed upon for their labor was the highest market-wages. The payments upon each of these contracts were made from the specific appropriations above mentioned." We think that persons whose services were rendered under contracts for "finished work," at the "highest market-wages," cannot be considered as employés in the civil service.

III.—*Laborers in the Commissary Department.*

It is noticeable that while the Quartermaster's Department is enumerated in the joint resolution, and also the Commissary-General of Prisoners, yet that the Commissary Department is unnamed. These cases present the question whether the Commissary Department is a part of the Army or a Bureau of the War Department. The earlier and the later statutes generally treat the Commissary-General as simply a military officer, though there is one statute which indicates that the office is a "military bureau" of the War Department. Act 4th July, 1836, (5 Stat. L., p. 117, § 5.) The joint resolution extends to "the following-named Departments or any Bureau or division thereof," and among these Departments is the War Department. If it was intended to include under the term "Bureau" or "division" the Commissary Department, it was needless to specifically name the Quartermaster's Department. On the contrary, it is not easy to understand why it should have embraced the other military bureaus, such as the Paymaster-General, the Commissary-General of Prisoners, the Bureau of Refugees, the Quartermaster's, and have omitted the Commissary Department. If the usual rule of construction be applied, the naming of some of these military bureaus in the joint resolution must be deemed to exclude those not named. But it is at the same time a moral certainty that Congress never intended to exclude one military bureau while it benefited all the rest. The history of this piece of legislation shows that it was made up of numerous amendments, hastily thrown together, and our conclusion is that it was intended to apply to the Commissary Department.

IV.—*Laborers in the Medical Department of the Army.*

The same question and the same embarrassment of construction arise with regard to this class of claimants that have been pointed out in the preceding class. The Surgeon-General, in an official report on this subject, says: "The Medical Department is not made a bureau of the War Department by any law known to me. By the term 'Medical Department,' or, more correctly 'Medical Department of the Army,' is under-

stood not a bureau or office, but the entire organization of means and appliances for conserving the health of the Army and taking care of the sick and the wounded." He adds: "The Surgeon-General's office is recognized in the annual appropriations made by Congress as a part of the War Department, but the claimant was not in the Surgeon-General's office. We think that this latter fact distinguishes these cases from the preceding, and that the parties were civil employés of the Army, and not in any sense in the civil service.

16 V.—*Laborers employed by the Quartermaster's Department at Washington, but whose services were rendered at Arlington, etc.*

However inconsistent it may seem for Congress to have allowed an increase of compensation to one man employed by the Quartermaster's Department, on this side of the Potomac, and to have withheld it from another, employed by the same officer, but sent to the other side of the river, it is clear that the joint resolution is limited by its terms to "persons now employed in the civil service of the United States at Washington." A person employed at Arlington is certainly not employed at Washington, although, as is claimed here, the hiring and the paying were both done in Washington. The fact that the contract of service had its inception here, and that final performance under it, that is to say, payment, was also made here, does not place the employment here; and we cannot, by any liberality of construction, extend the joint resolution to a person whose employment was elsewhere.

VI.—*Employés of the Secret Service Division of the Treasury Department.*

In this class the persons employed were under the direction of the Solicitor of the Treasury, and the duty performed appertained to the Treasury Department. It consisted chiefly in the detection of counterfeiters, and the parties "were stationed at no particular place except as their duties required." As we have previously held, in the case of Marche, (5 C. Cls. R., p. 525,) it was not the accidental presence of the claimant in the city of Washington which entitled him to the benefits of the joint resolution, but it was necessary that the functions of his office lie within the Treasury at the seat of Government. We do not understand that these detectives were necessarily employed here, nor, as a matter of fact, that they actually remained here. Their services were of a migratory character, and probably the smallest part of their employment was that which was rendered in Washington. Still, while liable to be sent elsewhere, they were stationed here. This was their only permanent place of official abode. Their salaries were fixed by law; they were in the civil service as assistants of the Solicitor of the Treasury; and they were in the civil service in a greater or less degree at Washington. Our conclusion is that they are entitled to recover.

VII.—*Cases where the statute of limitations is pleaded.*

A large number of the cases now before the court, including some in the preceding classes, were not brought until the 30th of June, 1873. The defendants set up the statute of limitations as to the eleven-twelfths of each demand. It is conceded that the suit was brought in time, so far as the last month's pay is involved, but it is insisted that the suit is barred as to all pay accruing before the first day of June, 1867. If the joint resolution, contrary to our construction of it, extends to all employés of the

Government, as well as to those in the civil service proper, it is evident that this theory of monthly payments cannot be universally applied. Some of the men were employed by the day, and some by the piece, and the question must arise whether a cause of action accrued to them strictly, as each day's work was done, or each piece of work finished, or whether there was a running account extending to the date of the last item. But with regard to those persons actually in the civil service, and entitled beyond question to the benefits of the joint resolution, it is undeniable that their salaries were generally paid monthly. But on
17 looking into the statutes we do not find that there is any provision of law to that effect. The salaries are almost invariably spoken of as "annual salaries." Occasionally there is some provision, as in the case of the judiciary, that they be paid quarterly; but ordinarily the time of payment is not fixed by law. Further than this, the joint resolution does not designate a time of payment. "There shall be allowed and paid," it says, "an additional compensation of twenty per centum on their respective salaries as fixed by law, or, where no salary is fixed by law, upon their pay, respectively, for one year." And it further provides that where a person "shall be only entitled to receive salary or pay for a part of said year, the said twenty per centum shall be paid on the amount such person is so entitled to receive for services within said year." It is, therefore, by no means clear that any portion of the twenty per centum was payable until the expiration of the fiscal year, and we are inclined to say, for these reasons, that a party's claim did not accrue until the fiscal year had ended.

Our conclusion, consequently, is that in five of the preceding classes of cases the Government is entitled to judgment. But the language of the Supreme Court before quoted is broad enough to warrant an inferior tribunal to come to a directly opposite conclusion. We are, however, inclined to believe that the Supreme Court could not have intended that its opinion should be applied to cases so inherently different from those before it as we consider the most of the present cases to be. Nevertheless, we are not unmindful of the fact that our conclusion is not free from doubt, and that the claimants, by reason of the smallness of their respective demands, have not the right of appeal to the Supreme Court. We therefore direct a judgment to be entered pro forma against the Government in one of each class of cases, so that the correctness of our conclusions may be reviewed by the Supreme Court. The residue of the cases which have been submitted will remain under advisement until the decision of the Supreme Court in those appealed.

Judgment will be entered for the claimants under this opinion in the following cases:

George A. Bell *v.* The United States for	$236 86
Patrick Welsh *v.* The United States for	108 85
John Wild *v.* The United States for	124 80
James Hannan *v.* The United States for	84 00
O. A. Hoffman *v.* The United States for	143 60
Thomas Dorkin *v.* The United States for	137 62
Maurice Tucker *v.* The United States for	360 00
John Smith *v.* The United States for	71 00
John Donnelly *v.* The United States for	65 80
J. D. Townley *v.* The United States for	125 65
John Cullen *v.* The United States for	206 96
Thomas Fugitt *v.* The United States for	160 55
Cha's Wood *v.* The United States for	67 68
Timothy Craven *v.* The United States for	69 41

18 DRAKE, CH. J.:

I do not wish to be considered as taking part in the decision just read.

It is my opinion that the repeal of the joint resolution of February 28, 1867, left this court without jurisdiction of any action for the recovery of anything thereunder.

Filed March 30, 1874.

19 In the Court of Claims.

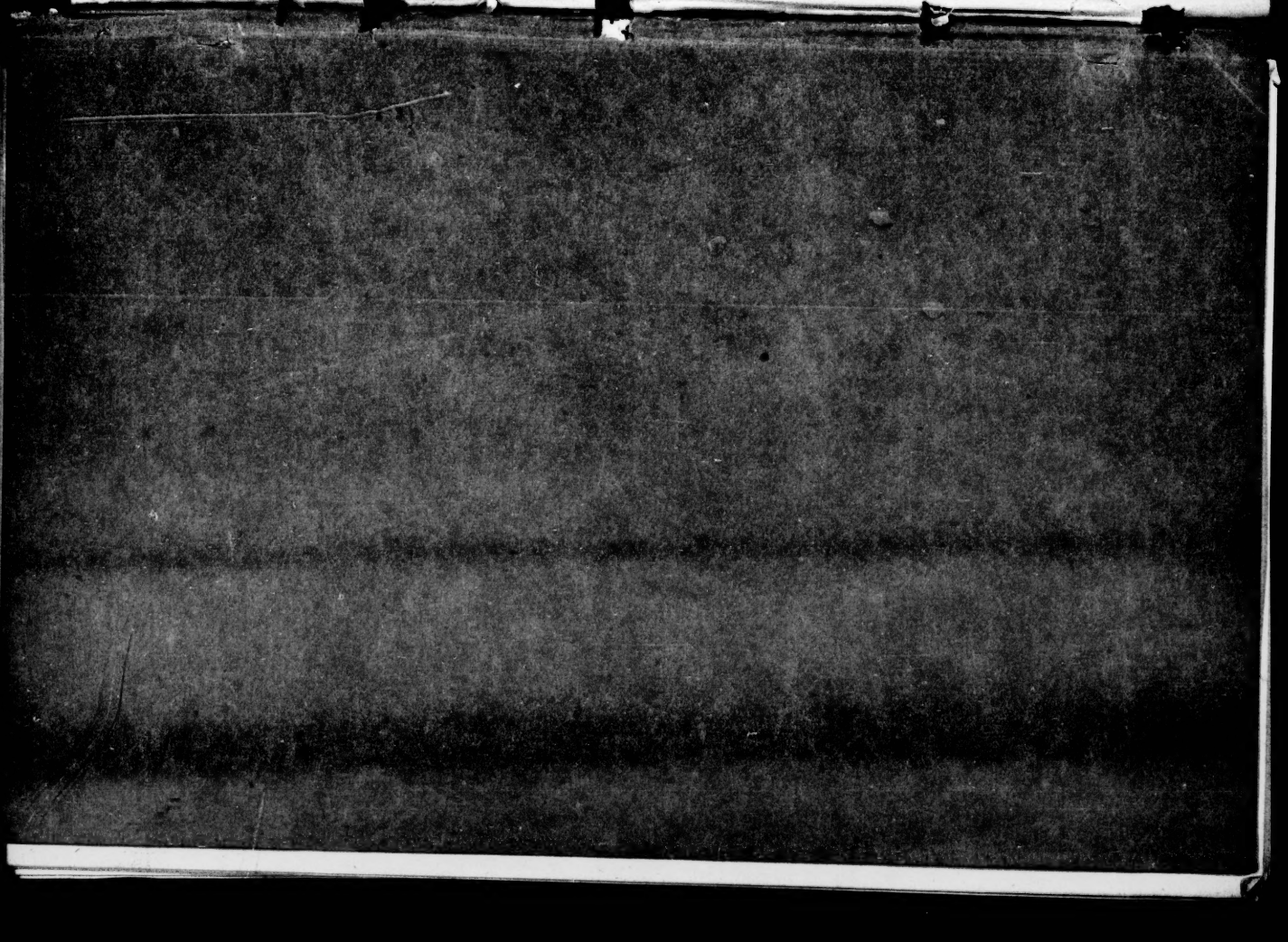
GEO. A. BELL
vs.
THE UNITED STATES. } No. 7001.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the Attorney-General for the defendants for the allowance of an appeal, as filed in the clerk's office April 13, 1874, and of the order of the court of April 13, 1874, allowing the same; of the findings of fact by the court, and the conclusion of law thereon, on which the court founded its judgment, and of the opinion of the court and the opinion of Chief Justice Drake.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 14th day of April, 1874.

[SEAL.] JOHN RANDOLPH,
Ass't. Clerk Court of Claims.

(Indorsement on cover:) No. 746. The United States, appellants, vs. George A. Bell. Court of Claims. Filed 14 April, 1874.



In the Supreme Court of the United States.

No. 746.

THE UNITED STATES, Appellants,

vs.

GEORGE A. BELL, Appellee.

Brief for Appellee.

This case arises by virtue of an act of Congress approved the 28th of February, 1867, and is as follows:

"*Be it resolved, &c.*, That there shall be allowed and paid out of any money in the Treasury not otherwise appropriated, to the following described persons, now employed in the *Civil Service of the United States, at Washington*, as follows: To civil officers, temporary and all other clerks, messengers, and watchmen, including enlisted men detailed as such, to be computed upon the gross amount of the compensation received by them; and *employees*, male and female, in the Executive Mansion, and in any of the following named Departments, or *any bureau* or *division thereof*, to wit: State, Treasury, War, Navy, Interior, Post Office, Attorney General, Agricultural, and including civil officers, and temporary and *all other clerks and employees, male and female*, in the offices of the Coast Survey, Naval Observatory, Navy Yard, Arsenal, Paymaster General, including the division of Referred Claims, Commissary General of Prisoners, Bureau of Refugees, Freedmen, and Abandoned Lands, Quartermaster's, Capitol and Treasury Extension, City Post Office, and Commissioner of Public Buildings, to the Photographer and Assistant Photographer of the Treasury Department, to the Superintendent of Meters, and to Lamplighters under the Commissioner of Public Build-

ings, *an additional compensation of twenty per centum on their respective salaries as fixed by law, or where no salary is fixed by law, upon their pay respectively, for one year from and after the thirtieth day of June, eighteen hundred and sixty-six;* but when any of said persons is or shall be only entitled to receive salary or pay for a *part* of said year, the said twenty per centum shall be computed on the amount such person is so entitled to receive for services in any or all of said departments or offices within said year: *Provided*, That the above named additional compensation to the employees of the Patent Office shall be paid out of the funds of said office: *Provided further*, That this resolution shall not apply to persons whose salaries, as fixed by law, exceed three thousand five hundred dollars per annum." (14 Stat. L. 569)

It will appear from the records of the Treasury Department, a copy of which is herewith submitted, that the Appellee was an employee in the Bureau of Engraving and Printing in the Treasury Department. His services continued in that capacity until after the passage of the above quoted joint resolution of Congress. The Appellee brought his suit in the Court of Claims for the additional compensation of twenty per centum provided for in said joint resolution of Congress, and the real question involved is, whether the appellee is embraced within the provisions of said act; and the manner in which the question is raised is, that the United States deny that the appellee was embraced in said act of Congress. The Court below having rendered judgment, *pro forma*, for the appellee, the Assistant Attorney General, on the part of the United States, brings this case into this Court by an appeal, and the question raised is, as to the correct construction of the said joint resolution of Congress.

Let us see how far the analysis of the law will bear out the conclusions of the Assistant Attorney General in this view of the case.

Both in the arguments of the Assistant Attorney General before the Court below, and the deductions of that Court in its findings, dwell with much emphasis on the

phrase "*Civil Service*," and make it play an important role in their analysis of the law in the case.

Let us here get at the root or derivation of the phrase civil service. It comes from two Latin words, *civilis*, from *civis*, a citizen, and *servitum*, a servant, "one who serves; one employed in labor or other business for another; to be subjected to; the occupation of a servant; duty performed in, or appropriated to, any office or charge," says Webster, and, in the sense used in the joint resolution of Congress, is a person or citizen in the employ of the Government of the United States at Washington.

This, then, we may conclude, is a clear and concise definition of the phrase as used in the foregoing resolution, and which must have filled the measure of the understanding of the law-giver at the time he drew the joint resolution, and which is borne out by the context.

Hence, we are clearly of the opinion that the learned Judge of the Court below fell into an error in his classifications of the various employees in the Government Departments in the city of Washington.

In the first place, the joint resolution of Congress, approved February 28, 1867, does not warrant this distinction of classes of employees who come within the provisions of the resolution by virtue "of an employment," and which are not excepted by the terms of the proviso. This view of the case is borne out by the unanimous decision of this Court in the case of Fitzpatrick and others, (13 Wallace, p. 568,) wherein the Court said that persons were "*properly in the civil service* if they *were employed* by the *head* of the Department, *or of the Bureau*, or any *division* of the Department *charged* with *that* duty, *and authorized to make such contracts*, and *fix the compensation of persons employed*, even though the particular employment may not be designated in any appropriation" act. That the appellees in the several classes of cases now under consideration were "*persons employed*" by the *head* of a De-

partment, or of a Bureau, or a division of the several Departments charged with that duty, we refer to the respective reports of these Departments herewith filed, and in the case of the appellee we here represent, the First Comptroller of the Treasury in his report in response to the order of the Court of Claims, says: "I have to state that the persons named in the list appended to the request of the court, and also named in the list hereto attached, appear from the pay-rolls on file in the Department to have been employed and paid as 'plate-printers' in the Bureau of Engraving and Printing in the Treasury Department for some portion of the year from June 30, 1866, till July 1, 1867, and the sums paid them for their services are set opposite their names respectively."

Here, then, is the evidence of employment *within* the *Bureau of Engraving and Printing in the Treasury Department*, and if correct in our definition, were "*in the civil service of the United States at Washington;*" and if so, falls within the first general class in the analysis of the findings in the Court below. Indeed, we seriously question the judicial right of the Court to travel outside of the plain provisions of the statute and put a construction or interpretation upon its broad and catholic meaning which its own phraseology, in our judgment, will not warrant. No such distinction or classification can be drawn from the language of the joint resolution. Congress never contemplated a discrimination in this act *against* those who happened to have their pay fixed upon a basis obtained from private or outside parties. The law creating this bureau within the Treasury Department declares, "That the Secretary of the Treasury be, and is hereby, authorized, in case he shall think it inexpedient to procure said notes, or any part thereof, to be engraved and printed by contract, to cause the said notes, or any part thereof, to be engraved, printed, and executed, in such form as he shall prescribe, at the Treasury Department in Washington, and under his direction; and he is hereby empowered to purchase and

provide all the machinery and material, and to *employ* such *persons* and appoint such officers as may be necessary for this purpose."—(12 U. S. Stats. at Large, sec. 2, p. 532.)

Upon carrying out this provision of the act a new bureau was created within the Treasury Department, called the "BUREAU OF ENGRAVING AND PRINTING," and a new class of officers were appointed to supervise and superintend its organization and workings; some at fixed salaries, while others were paid per diem wages. These were empowered by the Secretary of the Treasury to employ artizans, superintendents, and laborers. These, again, were employed, some upon fixed salaries, some by the piece or job, while others were employed by the day, and all at some fixed price determined upon by the heads of the several divisions of this bureau. The most that can be said of this mode of securing labor is, that the officers or superintendents employing the person exercised great prudence and diligence to protect the Government against extravagant wages or compensation for the amount of labor done. It seems to us reasonable that if Congress intended in the joint resolution to *discriminate against* those who were receiving per diem pay or pay per contract or job *within* any of the Departments named in the said resolution, Congress would have suggested some such discrimination in the act. But not having done so, either by word or implication, we must infer that they intended to embrace *all* who were in the employment of the Government at Washington; and if any are to be excepted, excepting as provided for in the act, the Court below, as well as the learned Attorney General, has failed thus far to point it out. Certainly he could not ask the Court to interpolate into the law a distinction that does not now exist, and which does not appear from the phraseology of the act to have been in the mind of the legislator at the time he penned it. These discriminations are not made in the act, and the Court cannot now make them. It either means *all* the employees in the several Departments excepting those mentioned in the second pro-

viso of the act, or it means nothing. The very able decision of this Court in the case of Fitzpatrick *et al.*, from which we have heretofore quoted, adds, that "Many persons not employed as clerks and messengers of the Departments are in the public service *by virtue of an employment* by the head of a Department or by the *head of a Bureau of the Department authorized by law to make such contracts, and such persons are as much in the service*, within the *meaning* of the joint resolution, *as the clerks and messengers employed in the rooms of the Department building.*"

With this clear and unambiguous statement by this court we might rest the case, feeling assured that no new point of law or fact has been brought forward by either the court below or the Attorney General to set aside the opinions of this court then expressed. But the court below having fallen into a grave error, doubtless induced by the erroneous statements of the Comptroller of the Treasury in classifying all these claimants in the Bureau of Engraving and Printing as "plate-printers," when the facts are that but thirty-six out of one hundred and nine of the number whose cases were passed upon were plate-printers, the residue being artizans, machinists, engineers, firemen, and other laborers within the Bureau. And in no instance of those for whom we are claiming additional compensation under the joint resolution did their gross income reach the sum of $2,000 during that fiscal year; and even admitting that they were all plate-printers and employed female assistants at $1.50 or $2 per day, this would not swell the aggregate amount of their earnings, including the pay of their assistants, to $3,500.

The court below, in its findings, says: "It is not pretended that the assistants could in their turn come in and claim 20 per-centum upon the amount allowed them by their employers, the plate-printers." And yet such was the fact, as shown by the following affidavits from three of these said assistants, all of whom received their 20 per cent. direct from the disbursing officer of the Treasury

without question as to their right to receive it, under the provisions of the joint resolution of Congress of the 28th of February, 1867, viz:

"We the undersigned parties who were employed as assistants to Wm. Dalton, Daniel Logan, and ——— Gedney, plate-printers in the Bureau of Engraving and Printing in the Treasury Department during the fiscal year ending June 30, 1867, and were paid the sum of $1.50 per diem, and upon the aggregate amount of our compensation for said fiscal year we received from the disbursing officer or pay-clerk of the Treasury Department 20 per centum under the joint resolution of Congress approved February 28, 1867.

"ANNIE MYERS, [SEAL.]
"MAGGI LEAHY, [SEAL.]
"MARY LARRY. [SEAL.]

"Subscribed and sworn to before me, a justice of the peace in and for the District of Columbia, this 16th day of April, A. D. 1874.

"W. H. FRAZIER, *J. P.*"

Here we claim is the evidence of service, not officially, but by affidavit of the parties themselves who were employed as assistants to the plate-printers therein named. As with these so with all those that were employed in the Bureau of Engraving and Printing in the Treasury Department as assistants of or to the plate-printers. Here, then, we assume that if these assistants were entitled to receive the 20 per cent. on their gross earnings for the fiscal year ending June 30, 1867, which earnings were paid out of the gross earnings of the plate-printers, their employers, then it follows that the principals were themselves *first* entitled to partake of the fruits of the act. The Government having paid these assistants 20 per cent. upon their earnings, paid to them out of the gross earnings of their principals, cannot be regarded as "strangers" to the Government in a legal sense. The Government took cognizance of their employment, and upon their gross earnings for that year paid them the 20 per cent. additional

compensation. Was their pay "*fixed by law?*" Certainly not more than the pay of the plate-printers who worked by contract, receiving so much "per one hundred sheets face, and per one hundred sheets back printing." Were these assistants in the "civil service of the United States within the meaning of the *joint resolution*," while their principals were not within the pale of said "civil service?" We cannot so view it.

Under the doubts that clouded the minds of the court below, and its reference to this court for final adjudication, we ask that the judgment of the court below in the case of this appellee be confirmed.

C. P. CULVER,
Of Counsel for Appellee.

15. Sup 77 —
5 Court of Claims 525 —
11. Sup 146